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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

LIN 03 105 54040

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

MAY 13 2004

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the People's Republic of China (PRC), as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *See* Decision of the Director, dated October 24, 2003.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

... shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival....

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation at section 214.2 does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate

the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Immigration and Naturalization Service [now Citizenship and Immigration Services] on February 21, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on February 21, 2001 and ended on February 21, 2003.

In response to the director's request for evidence and additional information, the petitioner submitted an unsigned copy of the divorce decree dissolving his marriage to [REDACTED] a copy of the divorce decree dissolving his marriage to [REDACTED] copies of Chinese documents relating to the divorces of the beneficiary and numerous envelopes addressed to the petitioner from the PRC. The petitioner failed to provide English translations of the submitted Chinese documents; evidence of a legal name change [REDACTED] and evidence to establish that the petitioner and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner submits a signed copy of the divorce decree dissolving his marriage to Betty Lam. The petitioner also submits several more envelopes addressed to the petitioner mailed from the PRC; an expired United States passport issued to the petitioner containing a PRC visa and entry and exit stamps from the PRC dated December 9, 2000 and January 29, 2001, respectively, and an Air Canada boarding pass dated December 8 with no year indicated. The petitioner states that his former spouse [REDACTED] changed her name at the time of her naturalization to [REDACTED]. The petitioner also states that the last time he saw the beneficiary was January 28, 2001 and that he has not been able to meet her within the last two years because of hardship to the petitioner. *See* Form I-290B, dated November 18, 2003.

The record does not contain documentation to substantiate the claims of the petitioner that his prior spouse legally changed her name. Further, the record does not contain English translations for the submitted documents purportedly evidencing the dissolution of the beneficiary's prior marriages in the PRC. Finally, the record does not contain evidence of a meeting between the petitioner and the beneficiary as required and does not offer documentation to substantiate the claim of hardship made by the petitioner. The AAO notes that the petitioner reports to have met the beneficiary during January 2001. Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between February 21, 2001 and February 21, 2003.

The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The AAO finds that the petitioner has failed to submit credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.